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13
14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
16
17 SAN JOSE DIVISION

18 IN RE: HIGH-TECH EMPLOYEE
19 ANTITRUST LITIGATION

20 THIS DOCUMENT RELATES TO:

21 ALL ACTIONS
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Master Docket No. 11-CV-2509-LHK

**JOINT CASE MANAGEMENT
STATEMENT**

Date: September 10, 2014
Time: 2:00 p.m.
Courtroom: 8, 4th Floor
Judge: The Honorable Lucy H. Koh

Pursuant to the Court's August 8, 2014 Order (Dkt. 975), the parties submit this joint statement for the September 10, 2014 Case Management Conference ("CMC").

I. Rescheduling the Trial and Pretrial Conference

Class Counsel and counsel for Defendants jointly request a new trial date. Counsel will be prepared to discuss a new trial schedule with the Court at the CMC with the aim of setting a trial date that is consistent with the Court's calendar and workable for the parties.

II. Resumption of Mediation

In light of the Court's Order Denying Plaintiffs' Motion for Preliminary Approval of Settlements with Adobe, Apple, Google, and Intel ("Settlement Order") (Dkt. 974), the parties have resumed mediation discussions with Hon. Layn Phillips (retired).

III. Other Open Issues

A. Motions Pending at Time of Proposed Settlement

After Plaintiffs filed their Motion for Preliminary Approval of the proposed settlement (Dkt. 920), the Court denied without prejudice several pending motions (Dkt. 929), including: (1) Plaintiffs' Motion to Exclude Defendants' Experts (Dkt. 565); (2) Defendants' Motion to Exclude Expert Testimony by Dr. Marx (Dkt. 559); (3) Plaintiffs' Motion to Compel (Dkt. 789); (4) Plaintiffs' Motion for Application of the Per Se Standard ("Per Se Motion") (Dkt. 830); and (5) Defendants' Motions in Limine (Dkt. 855). In light of the Court's Settlement Order, the parties request that each of their respective motions be renewed. All of the motions have been briefed, except that Plaintiffs have not yet filed their reply in support of their Per Se Motion. Plaintiffs propose that the deadline for that brief be September 12, 2014. Plaintiffs also request leave to file a supplemental brief regarding their pending Motion to Compel (Dkt. 789).

B. Dispute re Business Records Stipulation

The Court previously set a schedule regarding the parties' efforts to agree on a stipulation regarding business records. (Dkt. 768 at 2.) Prior to reaching the proposed settlement, the parties had completed all relevant actions, except for the filing of a Joint Statement Regarding Business Record Disputes. The Parties jointly propose that the deadline to file their Joint Statement Regarding Business Record Disputes be set for 60 days prior to the newly-set trial date.

1 **C. Dispute re Witness Lists**

2 Pursuant to the Court’s earlier scheduling order (Dkt. 768 at 2), the parties exchanged their
3 witness lists on April 7, 2014.

4 **1. Plaintiffs’ Statement**

5 Plaintiffs respectfully ask for an order that the Defendants serve a list of witnesses “likely”
6 to be called at trial, in accordance with the Court’s standing pre-trial order dated January 3, 2011
7 (the “Pre-Trial Order”). Defendants did not serve such a list. The list Defendants did serve—**70**
8 people whom they “may” call at trial—does not comply with the Pre-Trial Order and prejudices
9 Plaintiffs because it provides no useful information about Defendants’ trial plan.¹ Defendants
10 should be ordered to serve a compliant list.²

11 **2. Defendants’ Statement**

12 Defendants reject any suggestion that their witness list is improper, or that Plaintiffs’
13 witness list complies with the Court’s Pre-Trial Order while Defendants’ does not. Like Plaintiffs’
14 list, Defendants’ list reflects Defendants’ best efforts to narrow their list of possible witnesses in
15 advance of trial. It is just as unlikely that Plaintiffs will be able to call all 37 individuals they have
16 identified as “possible” witnesses (nine of whom are from Google alone) in the trial time allotted.
17 Defendants’ list was necessarily broader than Plaintiffs’ because Defendants present their case-in-
18 chief second, each Defendant is alleged to have played a different role in the alleged overarching
19 conspiracy, and each has its own story to tell. Given that Defendants do not know how Plaintiffs’
20 case will unfold—or how the Court will rule on Defendants’ motions in limine, which may affect

21 _____
22 ¹ On April 7, 2014, Plaintiffs served a witness list with 37 names, including four class
23 representatives, four experts, three third party witnesses, nine current or former Defendant CEOs,
24 and seventeen other Defendant witnesses from seven companies. This reflected Plaintiffs’ best
25 effort to narrow the list of possible witnesses in advance of trial.

26 ² Below, Defendants assert that the parties have not completed meeting and conferring on this
27 issue. To the contrary, the parties met and conferred regarding Defendants’ witness list prior to
28 reaching the proposed settlement, and Defendants refused to reduce the number of witnesses on
their list. Defendants’ proposed solution—dividing their 70 witnesses into a “likely” category and
a “may” category—is insufficient because it would not ameliorate the unfair prejudice to
Plaintiffs. Plaintiffs would have to prepare for potential cross examination and rebuttal regarding
the testimony of all 70 potential witnesses.

1 the need to call some witnesses—it is unrealistic to expect them to trim their list substantially at
 2 this stage. Defendants also note that the Court’s Pre-Trial Order precludes any witness not
 3 included on the witness lists from testifying without leave of court and for good cause shown.
 4 Moreover, Defendants have offered to divide their list into witnesses who are “likely” to testify
 5 and those who “may” testify. Should Plaintiffs likewise distinguish the “likely” witnesses from
 6 the “possible” witnesses on their list, it should allow the parties to prepare for trial in an efficient
 7 manner.

8 Finally, when the Court vacated all pre-trial deadlines in anticipation of Plaintiffs’ Motion
 9 for Preliminary Approval (Dkt. 904), the parties had only just begun to meet and confer over their
 10 respective witness lists. That process should be allowed to continue. Plaintiffs’ request for a
 11 vague order regarding witness lists is therefore premature and likely unnecessary.

12 **D. Other Pre-Trial Tasks**

13 In addition to the motions and disputes outlined above, the parties will, upon learning of
 14 the trial date and Pre-Trial Conference date, promptly meet and confer regarding a schedule for
 15 completion and filing of items (such as voir dire questions and preliminary jury instructions) that
 16 were pending when the parties reached the proposed settlement.

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26 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that concurrence in
27 the filing of this document has been obtained from all signatories.
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